INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 862

THE UNITED STATES, PETITIONER

v.

JOHN J. FELIN & CO., INC.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 12–14) is reported at 67 F. Supp. 1017.

JURISDICTION

The judgment of the Court of Claims was entered on October 7, 1946 (R. 15). The petition for a writ of certiorari was filed on January 7, 1947, and was granted on March 3, 1947 (R. 16). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether in a suit for just compensation by the owner of meat and meat products requisi-

tioned by the United States in the exercise of its wartime powers, the actual market price or the replacement cost was the proper measure of just compensation where the market price, which was the maximum applicable price as fixed by the Office of Price Administration, was less than the owner's cost of replacement.

STATUTE INVOLVED

The pertinent portion of the statute here involved as it read at the time of the requisition in question (the Act of October 16, 1941, c. 445, 55 Stat. 742, as amended by the Act of March 27, 1942, c. 199, 56 Stat. 181),[1] provided as follows:

> Whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1943, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of

[1] The statute has since been amended, in respects of no significance to this case, by the Act of June 30, 1943, c. 181, 57 Stat. 271, the Act of June 28, 1944, c. 307, 58 Stat. 624, and the Act of June 30, 1945, c. 208, 59 Stat. 271. See 50 U. S. C. App. (Supp. V) 721.

such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act * * * but each such determination shall be made as of the time it is requisitioned * * * in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States. If upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for the property is unwilling to accept the same as full and complete compensation for such property he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided by sections 24 (20) and 145 of the Judicial Code (U. S. C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be fair and just compensation for such property. * * *

STATEMENT

Respondent is, and for many years has been, engaged at Philadelphia, Pennsylvania, in the business of packing pork products. It buys hogs in the Chicago, St. Louis, and Indianapolis markets, transports them to Philadelphia for slaughter and conversion there into various pork cuts and products, and sells its products at wholesale, distributing them by trucks to retail dealers in the metropolitan area of Philadelphia. (R. 5.)

During the early months of 1943, in addition to a greatly increased civilian demand, large quantities of pork products were being purchased by Government agencies for war uses. There was consequently an acute shortage of pork for the civilian population; offerings on the market were considerably below normal; supplies available for the general trade were far short of the demand; and the Food Distribution Administration, which was in charge of procuring meat for Government agencies for shipment under the Lend-Lease program, was having difficulty in obtaining its requirements. (R. 5, 10–11.)[2]

[2] The Food Distribution Administration was an agency within the Department of Agriculture created by Executive Order No. 9280 (7 F. R. 10179, 50 U. S. C. App. (Supp. V) 601 note). This order authorized and directed the Secretary of Agriculture to assume full responsibility for, and control over, the Nation's food program, in order to assure an adequate supply and efficient distribution of food to meet war and essential civilian needs. Delegated to him were the powers, among others, to assign food pri-

It was at this time, on February 2, 1943, that the Food Distribution Administration sent respondent a so-called priority order. This was a purchase order requesting respondent to deliver 225,000 pounds of lard and pork products to the Federal Surplus Commodities Corporation, an agency of the United States, for delivery under the Lend-Lease program. The order stated that respondent would be paid the applicable O. P. A. ceiling prices and advised respondent that it was required to fill the order in preference to other contracts or purchase orders. (R. 5–6.)[4]

---

orities and allocate food to governmental agencies and for private account, and to purchase and procure food for the Federal agencies (R. 5).

[4] The priority order addressed to respondent made specific reference to Priority Regulation No. 1, as amended, of the War Production Board (6 F. R. 6680; 7 F. R. 3311, 4832, 6256, 11060). Under that regulation, as it then read, "Any contract or purchase order placed by any agency of the United States Government for material or equipment to be delivered * * * pursuant to the Act of March 11, 1941" (the Lend-Lease Act), was designated a "Defense Order" (§ 944.1 (b); 6 F. R. 6680; 7 F. R. 3311, 4832; CCH, War Law Service, Priorities, Par. 30,901.102); was assigned, at the least, the high preference rating of A–10 (§ 944.1 (a); 6 F. R. 6680; CCH, *op. cit.*, Par. 30,901.106); and was required to be accepted and filled in preference to other contracts and purchase orders bearing lower or no preference ratings (§§ 944.2, 944.7; 6 F. R. 6680; 7 F. R. 4832, 6256; CCH, *op. cit.*, Pars. 30,901.118, 30,901.165). "Material" was defined to mean "any commodity, equipment, accessory, part, assembly or product of any kind" (§ 944.1 (c); 6 F. R. 6680; CCH, *op. cit.*, Par. 30,901.102). Wilful failure to comply with Priority Regulation No. 1 was subject to criminal prosecution under Title III of the

Although respondent had theretofore supplied pork products to several Government agencies, it had, by February 2, 1943, decided that it could no longer afford to sell at the prices offered by them. Accordingly, it refused to make delivery in accordance with the priority order, and the Director of the Food Distribution Administration, acting under the authority of Executive Order 9280 and by specific authorization of the Secretary of Agriculture, issued, on March 1, 1943, the requisition involved here. Title and possession of the property requisitioned was taken by the United States on March 3, 1943. The property consisted of the following products located at respondent's packing house in Philadelphia, Pennsylvania:

40,000 lbs. Cured Regular Hams, 14 to 18 lb. range
40,000 lbs. Cured Clear Bellies, 10 to 14 lb. range
15,000 lbs. Cured Picnics, 6 to 10 lb. range
30,000 lbs. Salted Fatbacks, 8 to 12 lb. range
100,000 lbs. Refined Pure Lard, 1 lb. prints (30 lbs. to carton).

(R. 6).

Second War Powers Act (Act of March 27, 1942, c. 199, Tit. III, § 301, 56 Stat. 177, 50 U. S. C. App., Supp. V, 633).

On March 13, 1943, the Director of the Food Distribution Administration issued an order which required each slaughterer operating under Federal inspection to set aside for war uses 45 percent of all pork and designated percentages of other meat derived from the slaughter of hogs and other livestock (R. 11).

On March 24, 1943, respondent prepared, and promptly thereafter filed, its claim with the Food Distribution Administration, stating that fair and just compensation for the property requisitioned was the sum of $55,525—$16,250 for the lard and $39,275 for the pork cuts. Respondent claimed that $39,275 was the cost of replacing the pork cuts on the basis of a live hog cost of $15.90 per cwt. at Chicago, Illinois, on the date of the requisition, contending that the applicable O. P. A. ceiling prices afforded less than fair and just compensation because they were based on a live hog cost at Chicago of only $13.15 per cwt. On May 7, 1943, the Director of the Food Distribution Administration made a preliminary determination that fair and just compensation for the property requisitioned was the sum of $40,656.28—$15,543.78 for the lard and $25,112.50 for the pork cuts. These amounts were computed by reference to the O. P. A. ceiling prices applicable for sale of the requisitioned products at wholesale in carload quantities at Philadelphia, Pennsylvania. Respondent received notice of the preliminary determination on May 8, and, on May 15, 1943, wrote the Office of Food Distribution accepting the award for the lard, but objecting to the award for the pork cuts on the ground that it was less than the cost of producing or replacing that property. On May 22, 1943, the Director of the Food Distribution Administration made a final award for the

pork cuts in the sum of $25,112.50. Respondent refused to accept that amount and, in accordance with the Act of October 16, 1941, as amended, *supra*, pp. 2–3, was paid 50 per cent thereof, that is, $12,556.25. (R. 6–7.)[4]

On March 3, 1943, when respondent's pork cuts were requisitioned, there was a ready market for such products at Philadelphia, and the prevailing market prices were the maximum prices established by Revised Maximum Price Regulation No. 148 of the Office of Price Administration[5] and Amendment No. 1 thereto.[6] Both prior to and after the date of requisition, respondent regularly sold pork cuts and other pork products in that market at those prevailing established ceiling prices. They were the maximum prices at which respondent could legally dispose of its products, and respondent continued to buy live hogs at unrestricted prevailing prices[7] and to sell pork products derived from them at the ceiling prices, even when the cost of live hogs was greater than the wholesale prices of the products obtained from them. (R. 11.) Respondent chose to do this in

[4] Respondent has accepted and been paid the full amount awarded as compensation for the lard (R. 7).

[5] Issued October 22, 1942; 7 F. R. 8609, 8948, 9005.

[6] Issued January 13, 1943; 8 F. R. 544.

[7] There were no price regulations governing the sale of live hogs until September 11, 1943, when Maximum Price Regulation No. 469 (8 F. R. 12562) was issued, establishing ceiling prices of live hogs effective on October 4, 1943 (R. 9).

order to protect its good will and the investment in its business, in order to supply customers who were dependent on it, and in order to retain its organization of plant and company employees at a time when the labor situation in Philadelphia was very tense (R. 11).

Price ceilings on the sale of wholesale pork cuts had first been established by the Office of Price Administration on March 9, 1942, at those prices which had prevailed for such products during the period from March 3, 1942 to March 7, 1942, inclusive. Those prices reflected a then Chicago average live hog price of $13.15 per cwt.* The maximum prices established by Revised Maximum Price Regulation No. 148 and Amendment No. 1 thereto (which were in effect when respondent's property was requisitioned) likewise were based on the March 3–March 7, 1942 price levels (R. 7–8). Live hog prices, unrestricted by maximum price regulation, began to rise, however, soon after the institution of controls on the prices for pork products, and although there was a price decline in November and December, 1942, hog prices began to rise again in late December 1942, reaching an average of $15.59 per cwt. for the month of March 1943 and of $15.60 per cwt. for

* Chicago market quotations are the basic quotations in the packing industry and are generally used for arriving at prices on hogs and pork products in other market centers (R. 8).

the week ending March 6, 1943. During the months of February and March 1943, the current prices for livestock were above the levels reflecting a proper relationship to the existing wholesale meat ceilings. (R. 8.)*

On July 17, 1942, and March 18, 1943, respondent filed with the Price Administrator written protests to Maximum Price Regulation No. 148, and Revised Maximum Price Regulation No. 148, respectively. Orders and accompanying opinions denying respondent's protests were entered by the Price Administrator on April 23, 1943, and July 5, 1943. Respondent made no attempt to have these decisions reviewed by the Emergency Court

---

*In the Statement of Considerations accompanying Maximum Price Regulation No. 469, referred to in the special findings of the court below (R. 9–10), the Price Administrator noted that the seasonal nature of livestock marketing had made periods of loss a commonplace in the packing industry and that slaughterers generally had been able to balance seasonal losses with profits at other times; thus, the hog prices during the months of May, June, and July, 1943, had been low enough to permit slaughterers to make a profit, and many slaughterers who had suffered losses during the first three months of 1943 had "undoubtedly" recouped those losses during May, June, and July. He was of the opinion, nevertheless, that the sharp fluctuation in live hog prices demonstrated that the indirect controls previously imposed—wholesale and retail price ceilings, rationing, and slaughter restrictions—were not fully effective and that the establishment of ceiling prices for live hogs had become necessary in order to remove the threat of repeated crises, to permit necessary stability in the operations of the industry, and to assure the continuance of hog prices properly related to wholesale pork ceilings.

of Appeals, as authorized by the Emergency Price Control Act of 1942. (R. 10.)

Respondent attempted to replace the property requisitioned by purchasing pork cuts in the market. This proved unsuccessful, and respondent, in accordance with its usual practice, purchased and slaughtered live hogs to replace the cuts requisitioned. The replacement cost was $30,293. The ceiling price of the requisitioned property when sold at wholesale and in carload quantities at Philadelphia, Pennsylvania, on March 3, 1943, was $25,112.50. (R. 11.)[10]

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In failing to hold that the market value at the time of the requisition constituted the measur

[10] The purchase order and requisition issued by petitioner called for the delivery of respondent's pork cuts in carload quantities, whereas respondent customarily sold such products in lots of less than 500 pounds each. Respondent's customers, approximately 5,000 in number, are retail meat dealers located in the Philadelphia area, whom respondent served by means of 57 route trucks. The ceiling price of the requisitioned property when sold at wholesale in lots of 500 pounds or less in Philadelphia at the time of the taking was $26,362.50. The excess of this figure over the ceiling price of respondent's property when sold at wholesale results from the fact that provisions of the Maximum Price Regulation which established the market prices authorized a reduction of $1.00 per cwt. for sales at wholesale in carload quantities. The $1.00 differential was intended partly to defray the expense in delivery wholesale in less than carload quantities (R. 11–12).

of just compensation in the circumstances of the case.

2. In applying as the test of just compensation for the respondent's requisitioned meat the replacement cost thereof.

3. In fixing as just compensation for the meat products requisitioned an amount in excess of the respective maximum market prices thereof as fixed by regulations of the Office of Price Administration at the time of its requisition.

4. In entering judgment for the respondent.

SUMMARY OF ARGUMENT

I

The Court of Claims erred in awarding respondent a judgment for the cost of replacing the requisitioned pork products. Its decision rests solely on the peculiar value which the property taken had to respondent personally and thus ignores the settled principles that just compensation in eminent domain cases is "for the property, and not to the owner" and that such special value as the property may have to its owner is of no significance in determining just compensation.

The most reasonable and satisfactory criterion for determining just compensation is the market value of the property at the time of taking, expressed in terms of dollars and cents; and where an actual market exists in which the property in question is being actively traded, the prevailing

market prices are the determinant. In this case where, as the court below found, there was a "ready market" for the requisitioned products at the time and place of requisition and the prevailing market prices were the applicable maximum prices established by the Office of Price Administration, those prices govern. This is particularly true here, where respondent was active in regularly selling such products in the existing market at the prevailing O. P. A. prices.

There are no valid reasons for rejecting the market price standard. That the market prices were less than the cost of replacing the property seized is of no significance. Cost is never the criterion for determining the fair compensation for commodities taken by the Government.

Nor does the fact that the market prices were limited by, and in fact the equivalent of, the O. P. A. ceiling prices impair their effectiveness as the measure of just compensation. Applicable governmental maximum price regulations have no less significance in their impact on the market value of the commodities to which they apply than do the facts that a war exists and that market conditions have thereby been rendered abnormal. And such circumstances, as this Court has recognized, are as material as other factors in the market in ascertaining what is just compensation.

The judgment below would, in effect, indemnify respondent not only for the loss of the pork cuts

740201—47——3

taken by the Government but also for the loss of the opportunity to sell such products to its regular customers and thus to retain those customers and their good will. Even if such an opportunity were available to respondent, which is by no means certain, its loss was only incidental to the taking of the pork products and, in accordance with established principles, not compensable.

II

The rule of the decision below, if approved, would render impossible the maintenance of any effective price control system to counteract inflation in a wartime economy. If sellers, like respondent here, had been permitted to avoid the effect of maximum price regulations issued under the Emergency Price Control Act of 1942 simply by withholding their products from purchaser Federal, State, and local governments, the Congressional purpose expressed in the Act, to protect these governments from excessive price rises, would have been defeated. But, more significant, the United States cannot hope effectively to stem the tide of inflation during wartime if its own procurement program must remain free from control. For, during a war period, Government buying dominates the markets. There is consequently little promise of generally restricting prices to reasonable levels during time of war unless prices on sales to the Government are effectively controlled.

Moreover, the judgment below, in effect, would compensate respondent for the impairment of the value of its pork products occasioned by the Government's maximum price regulations, for which loss compensation is traditionally not recoverable. It is a palpable injustice to award respondent such compensation while denying it to the much larger class of packers who have voluntarily supplied the Government and thereby, and in sales for private account, have suffered the very same losses as has respondent here.

ARGUMENT

The requisition of respondent's property was made under the Act of October 16, 1941, as amended, *supra*, pp. 2–3. That statute authorizes requisitions of such property "upon the payment of fair and just compensation * * * to be determined * * * as of the time it is requisitioned * * * in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States." Accordingly, the principles enunciated by this Court and applied for ascertaining just compensation in eminent domain cases are applicable. We submit that the decision below violates those principles. We urge further that the decision cannot be reconciled with an effective system of maximum price regulation during a war period, when the Government is a dominant buyer in the nation's markets.

I

THE TRUE MEASURE OF JUST COMPENSATION TO WHICH RESPONDENT WAS ENTITLED FOR THE TAKING OF ITS PRODUCTS WAS THE ACTUAL MARKET PRICES OF SUCH PRODUCTS PREVAILING IN THE MARKET WHICH EXISTED AT THE TIME OF THE TAKING AND IN WHICH RESPONDENT ACTIVELY PARTICIPATED, NOTWITHSTANDING THE FACT THAT THE MARKET PRICES WERE THE EQUIVALENT OF THE O. P. A. CEILING PRICES

The Court of Claims found that at the time respondent's pork products were requisitioned, a ready market for such products existed at Philadelphia, that the prevailing market prices for such products in Philadelphia were the established O. P. A. ceiling prices, and that respondent regularly sold such products, both prior and subsequent to the taking, at those prevailing ceiling prices (R. 11). Nevertheless, the court expressly rejected the market prices as the measure of just compensation (R. 12) and awarded respondent the replacement cost of the commodities taken (R. 13–14). This was accepted as the proper measure of compensation apparently because respondent "felt obliged to furnish its customers a certain amount of products, although at a loss, in order to retain their good will and to provide employment for its employees, and thus hold its organization together;" because in order so to supply its customers, it had to replace the products taken; and because the market prices then

prevailing were less than the cost of replacing those products (R. 13). An award of compensation computed on the market price basis would not, said the court, put respondent in as good a position pecuniarily as it was in before its property was taken, and would thus fall short of just compensation (*Ibid.*).

The error in the rationale of the Court of Claims is plain. This Court has indeed broadly stated that just compensation "means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken * * *." *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299, 304. But it has cautioned that that is true only in the sense that he is to receive the value of the property taken. *United States* v. *General Motors Corp.*, 323 U. S. 373, 379. Requisition proceedings are essentially proceedings *in rem* (Cf. *United States* v. *Petty Motor Co.*, 327 U. S. 372, 376), and the just compensation, required in such proceedings, is "for the property, and not to the owner." *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 326. Any particular use to which the owner may have been devoting or intending to devote his property and such special value as it may have had to him are, therefore, of no significance in ascertaining the extent of the compensation to which he is entitled. *United States* v. *Petty Motor Co., supra*, at 377.

The court below ignored these settled principles, and rested its judgment solely upon the peculiar value which the property taken had to respondent personally. There is no question that if sold in the market actually existing for such commodities in Philadelphia on March 3, 1943, when the requisition occurred, the pork cuts would have brought only the O. P. A. ceiling prices. Those were not only the legal maxima; they were the prices which then prevailed (R. 11). Respondent had sold just such pork products at those very prices, before March 3, 1943, and it continued to do so after the requisition; indeed, the very pork cuts which respondent produced to replace those taken by the Government must have been sold at those prices, and if the Government had not requisitioned these products they would undoubtedly have been sold by the respondent in the course of trade at the same prices. Nevertheless, the Court of Claims awards respondent not the amount which it could have procured in the market, but a sum considerably greater. It thus compensates respondent not for the products actually taken by the Government but for the special value which those products may have had to respondent as items usable by it to retain the good will of its regular customers.

1. The decision below, if allowed to stand, will tend to foster an inequality and confusion which is foreign to the concept of fair and just compensation. Cf. *C. G. Blake Co.* v. *United States*, 275

Fed. 861 (S. D. Ohio), affirmed, 279 Fed. 71 (C. C. A. 6). The Court of Claims applied the standard of replacement cost apparently because it found that respondent "felt obliged" to replace the property taken. Under this rationalization, had the pork cuts needed by the Government been requisitioned not from respondent but from its customers, or from other packers who had no need to replace such products in order to maintain good will, the measure of compensation would apparently not have been the replacement cost. Similarly, had only a small quantity been requisitioned from respondent, insignificant so far as its effect on respondent's supposed obligations to its regular customers was concerned, that measure could not, even under the lower court's reasoning, be said to be replacement cost. Thus, it would seem that the Court of Claims has determined just compensation not by considering the worth of the property taken, but rather by considering the peculiar status of the person whose property has been taken.

The nub of the matter is that, at least in the ordinary case, the most reasonable and satisfactory criterion which the courts have devised for determining just compensation (although perhaps not the perfect one, *United States* v. *Miller*, 317 U. S. 369, 374) is the market value of the property at the time of taking, expressed in terms of dollars and cents. *Albrecht* v. *United States*, No.

148, this Term, decided February 3, 1947; *United States* v. *Petty Motor Co.*, 327 U. S. 372, 377; *United States* v. *General Motors Corp.*, 323 U. S. 373, 379; *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 275; *Olson* v. *United States*, 292 U. S. 246, 255; *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 124; *L. Vogelstein & Co., Inc.* v. *United States*, 262 U. S. 337, 340; *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53, 80.

Where there is in fact no market in which the property in question is being actively bought and sold, market value is determined by judicial postulation of such a market and ascertainment of "the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy * * *." *Olson* v. *United States, supra*, at 257; *Brooks-Scanlon Corp.* v. *United States, supra*, at 124. But where an actual market does exist, and there is trading in the commodities requisitioned, there is no need to resort to judicial hypothesis, and the prevailing market prices become the determinant of market value and of just compensation. *L. Vogelstein & Co., Inc.* v. *United States, supra; United States* v. *New River Collieries Co.*, 262 U. S. 341; *C. G. Blake Co.* v. *United States*, 275 Fed. 861 (S. D. Ohio), affirmed, 279 Fed. 71 (C. C. A. 6). In such circumstances, as the adage has it, "The worth of a thing is the

price it will bring." *Standard Oil Co.* v. *Southern Pacific Co.*, 268 U. S. 146, 158.[11]

These latter are the very circumstances in the instant suit. Here, as the court below found, there was "a ready market" for such pork products as were requisitioned from respondent at the time and at the place of requisition (R. 11). The prevailing market prices were easily ascertainable; they were the maximum prices established by the Office of Price Administration (*Ibid.*). At such prices, the property requisitioned from respondent had a market value of $25,112.50 (*Ibid.*). On these facts alone, respondent was entitled, as just compensation, to payment of only $25,112.50, with interest from the date of taking to the date payment was made or offered to respondent.

In addition, here, respondent was active in regularly selling its pork products in the existing market at the prevailing O. P. A. prices (R. 11). This it continued to do notwithstanding the fact that at times it was incurring a loss. Clearly, respondent is justly compensated for the requisitioned pork to the full extent intended by the Fifth Amendment when it is paid the very prices

[11] "Where there have been recent actual sales of substantially similar property, market value can be ascertained from an observation of those sales. It is unnecessary to go behind the scenes and inquire what influenced the buyers in paying the prices that they did." Hale, *Valuation in Condemnation Cases* (1931), 31 Col. L. Rev. 1, 2; Marcus, *The Taking and Destruction of Property under a Defense and War Program* (1942), 27 Cornell L. Q. 476, 529.

it was regularly receiving in the market for the pork taken.

2. The two primary reasons advanced by respondent in the court below, for rejecting the normal standard of market price in this case are invalid. It complained, first that the market prices were less than the cost of replacing the property seized [12] and, second, that those prices were limited by regulations of the Office of Price Administration.

a. As to the first, it seems sufficient to note that the divergence of market price from cost of producing or replacing property taken has never been held an appropriate reason for rejecting market price as the standard in determining just compensation. Cost is never the criterion for determining market value of a commodity and fair compensation for its taking. "It is the property and not the cost of it that is protected by the Fifth Amendment." *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, 123. "* * * the Fifth Amendment allows the owner only the fair

[12] The opinion of the court below speaks in terms of the original cost of acquiring the pork cuts requisitioned (R. 13). There is, however, no finding as to that cost; nor is there any telling just when the products taken were produced or acquired. The only relevant finding is with respect to the cost of replacing, that is reproducing, such products in March, 1943 (R. 11). Whatever the cost of production or reproduction, however, the reliability of market price as the measure of just compensation is, as we shall show, unimpaired.

market value of his property; it does not guarantee him a return of his investment * * *." *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 285. See, also, *Olson* v. *United States*, 292 U. S. 246, 255; *United States* v. *New River Collieries Co.*, 262 U. S. 341, 344; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 328.

b. Nor does the fact that the market prices were limited by and, in fact, the equivalent of the O. P. A. ceiling prices impair their effectiveness as the measure of fair compensation. With a ready market, market prices remain the best measure of market value. There is no logic in disregarding market prices because they may reflect conditions in the market which are imposed or spring from governmental intervention. As the district court said in *C. G. Blake Co.* v. *United States*, 275 Fed. 861 (S. D. Ohio), affirmed, 279 Fed. 71 (C. C. A. 6), when it rejected contentions advanced by the Government which are strikingly similar to those here urged by respondent (275 Fed., at 864):

> The fact that laws and governmental regulations affect the sale of commodities does not abrogate the settled rule that market value is just compensation. All transactions in the commercial world are more or less affected by such conditions. Tariffs, transportation regulations, and various legal restraints and restrictions are

> in constant operation. Neither does the fact that unusual conditions affect the market mean that there is no market or market price. Drouths, floods, commercial panics, crop failures, labor difficulties, and other causes frequently affect markets seriously, but not so as to warrant a court, when assessing compensation consequent upon the exercise of the right of eminent domain, in saying that there is no market. The effects of war may differ in degree, but, so long as a market—that is, a general buying and selling of the commodity—exists, the rule persists. * * *

In *L. Vogelstein & Co., Inc.* v. *United States*, 262 U. S. 337, this Court approved the prevailing market price as a standard of just compensation although that price was fixed with the approval of the President and did not necessarily reflect conditions of supply and demand in a free market unhampered by war conditions.[18] In that case,

---

[18] Nor did the Court of Claims feel compelled to reject market price as the criterion of just compensation in that case. 56 C. Cls. 362. Indeed, the instant case seems to mark a departure by the Court of Claims from a contrary rule announced and applied to the pecuniary disadvantage of the Government in numerous of its decisions arising out of requisitions during World War I. See *e. g.*, *Borland, Rec., Hudson Navig. Co.* v. *United States*, 57 C. Cls., 411, 416:

"* * * the contention that there was no market value for ships or for their use at the time this ship was taken is not tenable. The demand for ships was universal; the demand for their use was equally so. It is true that the market was affected by the war; war always affects market conditions, either enhancing prices or lowering them, but the fact that

the United States had requisitioned some 12,500,000 pounds of copper from the Vogelstein company and had paid it 23½ cents per pound. That was the price fixed in an agreement which had been made between the War Industries Board and representatives of the copper producers, and approved by the President. Although it does not appear that the company had been a party to the agreement, it had, through its controlling stockholder, actively cooperated in creating the organizational machinery to carry it into effect. During the period in which the appellant's copper was taken, about 283,000,000 pounds were furnished the United States at the 23½-cent price; the Vogelstein company itself sold some 25,000,000 pounds to the Government at that price; and that price prevailed uniformly in the market. Despite the fact that the average cost of the copper stocks which the company held when the 12,500,000 pounds were taken from it was 26.88 cents per pound, the Court affirmed the award of only 23½ cents, saying (262 U. S. at 340):

> * * * The market price was paid. The market value of the copper taken at the time it was taken measures the owner's

---

war has such effects does not affect the principles which must govern the courts in ascertaining values * * *."

See, also, *Atlantic Refining Co.* v. *United States*, 72 C. Cls. 1, certiorari denied, 285 U. S. 542; *Standard Transportation Co.* v. *United States*, 61 C. Cls. 906, certiorari denied, 273 U. S. 732; *Gulf Refining Co.* v. *United States*, 58 C. Cls. 559.

> compensation * * *. The higher prices, if any, paid by appellant for the copper it was compelled to take on long time purchase contracts are not evidence of the value of the copper at the time it was obtained by the United States. The United States is under no obligation to make good the loss. Appellant would be entitled to the gain if it had purchased at less than the market price at the time of taking.

In deciding the *Vogelstein* case, this Court was, of course, sensitive to the company's acquiescence in the market price and to its cooperation in putting and maintaining it in effect. But there is, we submit, no essential difference, for just compensation purposes, between a maximum market price which is maintained by majority agreement among the members of the industry involved and one which is maintained by regulation established by the Government as representative of the public. Moreover, in this case, parallel to the *Vogelstein* case, we find respondent regularly selling its products at the prevailing O. P. A. maximum prices (R. 11), notwithstanding the fact that respondent was apparently no more pleased with those prices than was the Vogelstein company with the price fixed by agreement for its copper.[14]

[14] It is noteworthy that although respondent, together with other packers, filed written protests against the maximum price regulations limiting the prices for its pork products and those protests were rejected by the Price Administra-

It is difficult to understand why applicable governmental maximum price regulations should have any less significance in their impact on the market value of the commodities to which they apply than

---

tor, it failed to avail itself of the review open to it in the Emergency Court of Appeals (R. 10). Cf. *Yakus* v. *United States*, 321 U. S. 414, 443–447. Respondent's reason for failing to carry its attack on the price regulations to the Emergency Court of Appeals is not clear from the record, but some hint may be found in the following statement in the Price Administrator's opinion accompanying his order of July 5, 1943, denying respondent's protest and those of the other protestants against Revised Maximum Price Regulation No. 148 (O. P. A. Docket No. 1148–188–P Consolidated):

"The evidence adduced is not sufficient to sustain the Protestants' attack on the general fairness of the regulation based on an alleged "squeeze," caused by increases in the cost of live hogs. Although the objection to the regulation is set forth in general terms as though the condition were one common to the entire industry, no evidence was submitted to support this conclusion. The three Protestants who submitted further evidence did not even thus sustain their claims of individual hardship. One of them showed a net profit of $60,492.44 for the five months period ending March 27, 1942; another a net profit of $6,838.00 for the three months period ending April 1, 1943, and the third failed to submit a profit and loss statement and balance sheet although specifically requested to do so. Only one Protestant submitted profit and loss figures in its original protest. Although its figures indicated a loss for the limited period from February 27 to March 27, 1943, reference to its financial report filed with the Office of Price Administration reveals that its net income after taxes was $25,658.05 for the fiscal year ending October 31, 1942. Only four other Protestants have filed such financial reports. One of these shows profits through the year 1942, and a second also for the first quarter of 1943. For the remaining two Protestants, such reports indicate losses in the year 1942."

do the facts that a war exists and that market conditions have thereby been rendered abnormal.[15] This Court has had occasion to observe, in connection with the exercise of the power of eminent domain during World War I, that just compensation is "the sum which, considering all the circumstances—*uncertainties of the war and the rest*—probably could have been obtained" for a sale of the property in question. *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, 123–124 (Italics supplied). And most of the courts and commentators who have considered related problems arising during this war are of the same view. *United States* v. *Delano Park Homes,* 146 F. 2d 473 (C. C. A. 2) per L. Hand, J.); *Iriarte* v. *United States,* 157 F. 2d 105 (C. C. A. 1); *United*

[15] The aside in *Bowles* v. *Willingham*, 321 U. S. 503, 517 (where the court holds that it is no constitutional objection to the fixing of maximum rents that they are established as fair and equitable on a class, rather than an individual basis) to the effect that such regulations do not present "a situation which involves a 'taking' of property" (and cf. *Yakus* v. *United States*, 321 U. S. 414, 437–438) obviously does not mean that O. P. A. ceiling prices or rentals, or sums less in amount can in no case constitute just compensation for a taking. Where O. P. A. prices become the prevailing prices in the market, *Bowles v. Willingham* can hardly be read to disqualify them as standards for acertaining just compensation in situations involving "taking." It is noteworthy that where the property of a public utility has been condemned, there appears to have been no reluctance, when ascertaining just compensation for the franchise destroyed, to compute earning power by reference to Government-fixed fees. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 329.

States v. *Sanitary Dist. of Chicago*, 149 F. 2d 951 (C. C. A. 7), certiorari dismissed *sub nom. Feldman* v. *United States*, 326 U. S. 687; *Cudahy Bros.* v. *United States*, 155 F. 2d 905 (C. C. A. 7); Note, *Legal and Economic Aspects of Wartime Price Control* (1942), 51 Yale L. J. 819, 840, fn. 102; Marcus, *The Taking and Destruction of Property under a Defense and War Program* (1942), 27 Cornell L. Q. 476, 529; Note (1946), 60 Harv. L. Rev. 132.[16]

[16] Accord: *United States* v. *122 Acres of Land*, 52 F. Supp. 650 (E. D. N. Y.); *Lessner Plumbing and Heating Co., Inc.* v. *United States*, 64 F. Supp. 931 (S. D. N. Y.); *Graves* v. *United States*, 62 F. Supp. 231 (W. D. N. Y.); *Louisville Flying Service, Inc.* v. *United States*, 64 F. Supp. 938 (W. D. Ky.). But see: *Walker* v. *United States*, 64 F. Supp. 135 (C. Cls.); *Coombs* v. *United States*, 65 F. Supp. 1014 (C. Cls.); *The Illinois Pure Aluminum Co.* v. *United States*, 67 F. Supp. 955 (C. Cls.), certiorari denied No. 860, this Term, March 10, 1947; *Arkansas Valley Ry. Inc.* v. *United States*, 68 F. Supp. 727 (C. Cls.), certiorari dismissed on motion of petitioner, No. 996, this Term, March 31, 1947; *Kaiser* v. *United States*, 69 F. Supp. 588 (C. Cls.); *Adler Metal Products Corp.* v. *United States*, 69 F. Supp. 591 (C. Cls.). Though we question most of these decisions, we submit that they are all distinguishable from the case in hand. In the *Walker* case, the court found that the market for the commodity there involved, raw silk, "had simply disappeared" prior to the taking (64 F. Supp., at 137); nevertheless the O. P. A. ceiling price, which had but recently been revoked, was held the best measure of just compensation. In *Coombs* and *Arkansas Valley*, the court rejected the O. P. A. ceiling prices for the items taken because it held that it was not the separate items, but the integrated businesses in place which had been requisitioned and that it was compensation

3. What the judgment below would do for respondent is to indemnify it not only for the loss of the pork cuts taken by the Government, but also for the loss of the opportunity to sell such products to its regular customers and thereby to retain those customers and their good will. Even if we assumed that such an opportunity were available to respondent, which is by no means certain,[17] the loss of that opportunity did not entitle

---

for the latter and not for the individual items which the Government had to pay. Moreover, it should be noted that when *Arkansas Valley* reached this Court, the railroad for the first time argued the inapplicability of the O. P. A. ceiling prices (Resp. Br. in Opposition to Petit. for Cert., pp. 2–3); and when Government counsel discovered that O. P. A. prices were indeed not applicable, they moved for dismissal of the petition for a writ of certiorari. In *Illinois Pure Aluminum*, *Kaiser*, and *Adler Metal Products* cases, the court was confronted with the requisition of scarce metals processed or semi-processed for use in nonessential and nonpermissible manufacture and rejected Government-fixed prices as the measures of just compensation, in effect, because there was no demonstrated regular market for such items in the condition in which they were requisitioned at the Government prices.

[17] On February 2, 1943, a month before the requisition occurred, respondent received a priority order from the Food Distribution Administration, to which, under applicable War Production Board regulations, respondent was compelled, to the extent it did sell the products later requisitioned, to give preference. See fn. 3, p. 5, *supra*. Failure to comply with this requirement was punishable as a crime under Title III of the Second War Powers Act (Act of March 27, 1942, c. 199, Tit. III, § 301, 56 Stat. 177, 50 U. S. C. App. (Supp. V) 633). In those circumstances, it is

it to any compensation. Such a loss would be only a business loss incidental to the taking of the pork cuts, and for such losses this Court has consistently denied recovery. As recently as the last Term, this Court said: "* * * Since 'market-value' does not fluctuate with the needs of condemnor or condemnee but with general demand for the property, evidence of loss of profits, damage to good will, the expense of relocation and other such consequential losses are refused in federal condemnation proceedings." *United States* v. *Petty Motor Co.*, 327 U. S. 372, 377–378. For "* * * the sovereign must pay only for what it takes, not for opportunities which the owner may lose * * *." *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 281–282.

In *Bothwell* v. *United States*, 254 U. S. 231, and *Mitchell* v. *United States*, 267 U. S. 341, recovery was denied owners of land taken by the United States for the resulting complete destruction of

---

doubtful whether respondent had any opportunity at all to sell the pork cuts to his private customers and whether it could, in any event, recover damages for the loss of such an opportunity occasioned by the taking. Cf. *Nortz* v. *United States*, 294 U. S. 317, and *Perry* v. *United States*, 294 U. S. 331. Such a priority regulation, frustrating respondent's obligations to other customers, does not in itself constitute a taking compensable under the Fifth Amendment. Cf. *Bowles* v. *Willingham*, 321 U. S. 503, 517–519; *Omnia Commercial Co.* v. *United States*, 261 U. S. 502; *Morrisdale Coal Co.* v. *United States*, 259 U. S. 188.

the businesses which they had been conducting on that land. In the light of those decisions, it can hardly be suggested that respondent is entitled to be repaid its investment in live hogs expended solely because it "felt obliged" (R. 13) to furnish its regular customers with a continual, though reduced, supply of pork cuts, lest its failure to do so might possibly damage its business. Respondent would not be entitled to be compensated for such damage even had it occurred, let alone for the investment made to assure that no such damage would occur.[18]

[18] It is noteworthy that there is no finding that respondent did in fact suffer any damages to its business as a consequence of the requisition. Although the court found that the principal item in the cost of producing products sold by respondent was the amount it had to pay from time to time for live hogs (R. 7), there is no finding as to respondent's profit-loss experience under the regulated prices for its pork products over any period of sufficient duration to neutralize the seasonal factors. The court below adjudged only that respondent be indemnified for expenditures which it "felt obliged" (R. 13) or "chose" (R. 11) to make "in order to protect its good will and the investment in its business, in order to supply customers who were dependent on it and in order to retain its organization of plant and company employees at a time when the labor situation in Philadelphia was very tense" (*Ibid.*). Therefore, the loss of business was at most speculative and it could have afforded respondent no basis for recovery even if it had been otherwise eligible for compensation. Cf. *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 276; *Olson* v. *United States*, 292 U. S. 246, 256–257; *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53, 79–80.

The reliance of the court below on the *General Motors* case, 323 U. S. 373 (R. 12, note 1), is misplaced. That case did not modify the long-established principle that consequential damages are not compensable; to the contrary, it expressly reaffirmed that doctrine. *Id.*, 323 U. S., at 379. The holding of the case is merely this: that where a portion of a leasehold is taken by the United States, the cost of removal from the premises and return thereto when the taking is terminated must be considered—not as independent items of damage, but as conditions to aid in determining the usual, the market price for the interest in the leasehold taken at the time of taking. This present suit involves the complete taking of personalty with no provision for its return; it presents a situation entirely different from *General Motors*. See *United States* v. *Petty Motor Co.*, 327 U. S., at 379–380.

II

THE RULE OF THE DECISION BELOW, IF APPROVED, WOULD RENDER IMPOSSIBLE THE MAINTENANCE OF ANY EFFECTIVE PRICE CONTROL SYSTEM TO COUNTERACT INFLATION IN A WARTIME ECONOMY.

Reversal of the decision below is, then, plainly required by the long-established and traditional reliance of the courts on market value as the determinant of just compensation in eminent domain cases. As we have indicated, there are no reasons for departing from the usual rules in this

case. To the contrary, there are cogent reasons why the rationale of the opinion below should be rejected; to affirm it would be to make it impossible in the future to protect the public interest through the effective prevention of a costly inflation during wartime.

1. The Director of the Food Distribution Administration determined that as compensation for the pork cuts requisitioned from it, respondent was entitled to a sum equivalent to what it could have procured had it sold such products in the Philadelphia market at the applicable O. P. A. ceiling prices (R. 7). These ceiling prices were the prevailing prices at the time of the requisition in a market which then actually existed in Philadelphia for such products (R. 11). Respondent rejected the award proffered it by the Government, contending that it was entitled to an amount equal to the cost of replacing the products which the Government had taken (R. 6–7). The Court of Claims, acquiescing in that view of the case, ordered that respondent recover the replacement cost, a sum some $5,000 more than the amount for which the pork cuts would have sold at the applicable maximum prices. In so doing, the court disregarded maximum price regulations duly promulgated under the Emergency Price Control Act of 1942 (Act of January 30, 1942, c. 26, 56 Stat. 23, as amended, 50 U. S. C. App. (Supp. V) 901, *et seq.*) and in substance held that such regulations, though effective for all sales, transfers, and

other deliveries, cease to be binding when affected commodities are delivered in obedience to the sovereign power of eminent domain. We submit that, in so holding, the court has laid down a rule which, if upheld, would frustrate the Congressional purpose, expressly declared in the Price Control Act, to stabilize prices and prevent wartime inflation. It would make impossible effective price regulation by the Congress in a wartime economy.

We consider, first, the letter of the 1942 Act. Section 1 (50 U. S. C. App. (Supp. V) 901) makes it clear that the Act was designed not only to protect private purchasers from the inflationary price rises consequent upon the wartime swollen demand, but also to protect the several governments in their capacity as purchaser. That section reads in part as follows:

> It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; *to assure that defense appropriations are not dissipated by excessive prices; * * * to prevent hardships * * * to the Federal, State, and local governments, which would*

> *result from abnormal increases in prices;* * * * and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. [Italics supplied.]

It needs no dissertation to demonstrate that if sellers, like respondent here, had been permitted to avoid the effect of maximum price regulations issued under the Price Control Act simply by withholding their products from purchaser governments, the Congressional purpose expressed above would have been defeated.

More significant than the impact of the Court of Claims' ruling on the 1942 Act, however, is its probable effect on future similar legislative efforts. The Government cannot hope effectively to stem the tide of inflation during wartime if the products involved in its own procurement program must remain free from price control. During a period of war, Government buying dominates the markets. Thus, during World War II, approximately half of our national annual output of some two hundred billion dollars worth of goods and services went to the local, State, and Federal governments, with the Federal Government by far the predominant purchaser. Sixth Report of Director of War Mobilization and Reconversion, April 1, 1946, H. Doc. No. 524, 79th Cong., 2d Sess., p. VI; Eighth Report of Director of War Mobilization and Reconversion, October 1, 1946,

H. Doc. 45, 80th Cong., 1st Sess., p. 7. On January 1, 1945, agricultural products representing about 10% of the Nation's total food supply were being purchased by the Government for Lend-Lease requirements alone. First Report of Director of War Mobilization and Reconversion, January 1, 1945, H. Doc. No. 9, 79th Cong., 1st Sess., p. 34. There is, consequently, little promise of generally restricting prices to reasonable levels during time of war unless the prices on sales to the Government are effectively controlled. Cf. *Yakus* v. *United States,* 321 U. S. 414, 432. And it is no answer to suggest that the importance of the Federal Government as a buyer affords it ample opportunity to dictate prices by economic compulsion and that legal sanctions are therefore superfluous. The exigencies of a mobile and total warfare do not permit time for the play of economic forces, as this very case clearly indicates. See Note, *Legal and Economic Aspects of Wartime Price Control* (1942), 51 Yale L. J. 819, 840–841.[19]

[19] "With the size of Government purchasing reaching astronomical proportions, failure on the part of the Government as a buyer to adhere generally to established price ceilings can nullify the beneficial effects of price fixing. Fortunately, the inflationary tendency of numerous uncoordinated Government purchasers which featured the last war effort has been largely avoided. But even assuming an integrated buying organization, the pressure to spend prodigious sums of money in a hurry and necessity for speedy procurement creates a situation in which some neglect of price ceilings may be inevitable." 51 Yale L. J., at 840–841.

The same commentator also remarks: "Where there is a

Nor can it be said that the dire consequences envisaged are remote and speculative possibilities, unlikely ever to occur. Of course, price regulations fair and equitable to each and every one of the innumerable persons concerned would discourage "hold-ups" of the Government. But assuring that maximum prices will be fair and equitable to all individuals, if at all feasible, is so difficult a task that Congress and this Court have recognized the inadvisability of making such assurance a test of the validity of maximum price regulation. See *Bowles* v. *Willingham*, 321 U. S. 503, 516–519. Again, the patriotism of the great preponderance of our suppliers will not generally countenance refusing the Government's urgent demands for goods at prices equal to those available in the open market. Such patriotic cooperation, however, depends in large measure upon the impartial treatment of all involved and cannot long endure when certain suppliers are permitted to recover more from the Government than the ceiling prices under which others similarly situated are compelled to ply their trade, incurring losses equal to those which may have been suffered by respondent.

---

price ceiling in operation, it is inconsistent with a policy of price control for a seller whose goods have been requisitioned to obtain a price higher than the ceiling." 51 Yale L. J., at 840, fn. 102. Also of the same view is Marcus, *The Taking and Destruction of Property under a Defense and War Program* (1942), 27 Cornell L. Q. 476, 528–530.

We do not wish to be misunderstood. We are fully aware that the determination of just compensation for property taken by the sovereign is a matter for the judiciary. *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312. We do not urge a departure from that rule. We say only that here, where the market prices in a ready market existing at the time and place of the requistion are equivalent to the O. P. A. ceiling prices, there is not only no reason to disregard those ceiling prices, but every reason to accept them as the measure of just compensation.[20] Acceptance of those prices in such circumstances can hardly be stigmatized as a capitulation to legislative and executive usurpation of the judicial power.

As Judge Learned Hand said, in giving full effect to wartime regulation in the condemnation proceeding of *United States* v. *Delano Park Homes, Inc.*, 146 F. 2d 473, 474 (C. C. A. 2):

> We cannot agree that the judge should have refused to consider the effect of "priorities." Nobody suggests that an owner whose land is not condemned, has any claim

[20] The Government in this case is seeking merely the application of established standards of compensation. Accordingly, it is not necessary to decide here whether the normal measure of compensation under the Fifth Amendment may in some situations, at least, be inapplicable to a taking in effectuation of the war power. Cf. *United States* v. *Bethlehem Steel Corp.*, 315 U. S. 289, 305; *Steuart & Bro.* v. *Bowles*, 322 U. S. 398, 405–406.

upon the United States because he cannot employ it profitably until the system ends. Yet to appraise the land without any deduction for a period during which it will bring in no income, is to reimburse the owner pro tanto; a discount measured by commuting the losses, de die in diem, is necessary to avoid putting into a preferred class owners whose lands happen to be condemned, as against those who must bear the deprivation without relief. Otherwise condemnation will prove a bonanza. * * * Certainly, when an owner can hold his property until the market recovers, it is unjust to allow him only current prices, for presumably he will wait for a recovery before disposing of his goods. Whether the same reasoning applies when he cannot wait, is another question; not decided, so far as we know. However that may be, when competent authority has fixed prices at a maximum, or has denied owners some specific use of their property, it is patently a disregard of its authority, either indirectly to allow a higher price on condemnation, or to allow the price to be figured in disregard of the limitation imposed. * * *

2. The promulgation of Revised Maximum Price Regulation No. 148, establishing ceilings for the sale and purchase of pork cuts, was a valid exercise of the powers vested in the Congress and the Executive. *Yakus* v. *United States,* 321 U. S.

414; *Bowles* v. *Willingham*, 321 U. S. 503. Whatever damages and losses respondent may have suffered as a result of that Regulation are not recoverable under our system of law. *Bowles* v. *Willingham, supra,* at 517–519; *Omnia Commercial Co.* v. *United States,* 261 U. S. 502; *Morrisdale Coal Co.* v. *United States,* 259 U. S. 188. There is no reason why respondent should be compensated for such losses solely because of the accident that its particular products, no more affected by regulation than those of the many other packers, were requisitioned by the Government. Yet that is just what the decision of the court below accomplishes. The additional loss which respondent incurs by replacement of the pork requisitioned (R. 13) is one occasioned not by the taking but by the maximum price regulation. Payment of the ceiling prices would compensate respondent fully for the property taken—those are the prices they would have brought in the market. Such payment would not compensate it for the loss represented by the difference between cost of replacement and ceiling price—but for that, a loss consequent upon valid governmental regulations, it is entitled to no compensation. Certainly it is a palpable injustice to award compensation for impairment of value in favor of respondent, who has refused to sell to the Government, while denying it to the much larger class of packers who have voluntarily supplied the Government and thereby

and in sales for private account have suffered the very same losses as has respondent here. See Note (1946), 60 Harv. L. R. 132, 136–137.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the Court of Claims should be reversed, with directions to enter a judgment for respondent in an amount not exceeding $12,556.25, with interest on the amount of $25,112.50 from March 3, 1943, the date of the requisition, to May 22, 1943, the date of the final award made by the Director of the Food Distribution Administration.

GEORGE T. WASHINGTON,
Acting Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
PAUL A. SWEENEY,
HARRY I. RAND,
Attorneys.

APRIL 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947